SUPREME COURT, U. S.
FILED
MAY 18 1971
E. ROBERT SEAVER, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1970

NO. 1579

HARTFORD ACCIDENT AND INDEMNITY COMPANY,

Petitioner,

vs.

EASTERN AIRLINES, INC.

Respondent.

REPLY BRIEF OF PETITIONER

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TABLE OF CONTENTS

	Page
STATEMENT	1
ARGUMENT	1
CONCLUSION	1
CERTIFICATE OF SERVICE	4

AUTHORITIES CITED

Case	Page
Erie v. Tompkins 304 U.S. 64 (1938)	2
Hartford Accident and Indemnity Company v. Eastern Airlines, Inc. 5 Cir. 1971, 437 F.2d 449	2

UNITED STATES CODE

28 U.S.C. § 1652	2

RULES OF THE SUPREME COURT OF THE UNITED STATES

Rule 19	2
Rule 56	1, 2

FLORIDA STATUTES

§ 672.2-313	2

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STATEMENT

The Court will not be burdened with any reiteration or enlargement of argument made in the petition. This reply brief will be directed to respondent's point two which asks for damages under Rule 56 on the alleged ground that the petition for certiorari was filed solely for the purpose of delay.

ARGUMENT

The petition for a writ of certiorari comes within the purview of Rule 19 in that the United States Court of Appeals for the Fifth Circuit "has decided an important state question in a way in conflict with applicable state . . . law".

Respondent makes the self-serving statement that the "Fifth Circuit in its decision was obviously referring to Hartford's defense under Florida Statute § 672.2-313 in its discussion of the case." No mention or reference to the controlling Florida Statute is found in the Fifth Circuit's opinion.[1] (Petition-Appendix C).

As pointed out in respondent's brief the "purported basis for the petition is that the District Court and the Fifth Circuit did not comply with United States Code Title 28 § 1652 and the decision of this Court in *Erie R.R. vs. Tompkins*, 304 U.S. 64 (1938) in that they 'declined to follow the pertinent law of Florida and frustrated the basic Legislative purpose that under the adopted Uniform Commercial Code on sales a purchaser shall receive the goods bargained for and the goods shall conform to those described by the seller.' "

Certainly, a petition is not filed solely for the purpose of delay where the reasons for filing same are bottomed on a decision of the Fifth Circuit, which ignores the clear application of a state statute contrary to the Congressional mandate of § 1652 of Title 28, U.S.C. and which directly conflicts with the decisional law announced in *Erie R.R. vs. Tompkins, supra.*

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[1]The opinion of the Court of Appeals is reported at 437 F.2d 449.

CONCLUSION

Respondent's point two is without any basis. For the reasons set forth in the petition, a writ of certiorari should issue to review the judgment and opinion of the Fifth Circuit.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Richard M. Gale, attorney for petitioner, and a member of the Bar of the Supreme Court of the United States do hereby certify that I have this day of May, 1971, mailed, First Class postage prepaid, three printed reply briefs of petitioner to Charles Kimbrell, Esq., Dade Federal Building, Miami, Florida.

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